

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

David Billups,
Plaintiff

Case No. C-1-01-377

vs

James McWeeney, et al.,
Defendants

ORDER
(Spiegel, J.; Hogan, M.J.)

This matter is before the Court on plaintiff's motions to withdraw notice of interlocutory appeal (Doc. 142) and for evidentiary hearing and for order to file enclosed legal papers nunc pro tunc. (Doc. 143).

For good cause shown, plaintiff's motions to withdraw notice of interlocutory appeal (Doc. 142) is **GRANTED**.

Plaintiff's motion for order to file enclosed legal papers nunc pro tunc (Doc. 143) seeks an order directing the attached motion to depose Dr. Dulan and motion to set aside the Court's Order of December 30, 2003 be filed as of January 6, 2004, the date plaintiff placed such motions in the prison mail system. *See Houston v. Lack*, 487 U.S. 266, 270 (1988). These motions were inexplicably returned to plaintiff by the United States Postal Service as "attempted not known." For good cause shown, plaintiff's motion is **GRANTED**. The Clerk of Court is hereby **DIRECTED** to file plaintiff's motion to depose Dr. Dulan and plaintiff's motion to set aside the Court's Order of December 30, 2003 with an effective filing date of January 6, 2004.

Plaintiff's motion for evidentiary hearing seeks a hearing to determine why the above motions were not received and filed. Since the Court directs that plaintiff's motions be filed with an effective filing date of January 6, 2004, plaintiff has suffered no harm as a result of the return of his mail and an evidentiary hearing is not

necessary. Accordingly, plaintiff's motion for evidentiary hearing is **DENIED**.

IT IS SO ORDERED.

Date: 2/10/2004

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge